

FCC MAIL SECTION

Federal Communications Commission

DA 00-322

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

DIST. BY MAIL

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-112
Table of Allotments)	RM-9027
FM Broadcast Stations.)	RM-9268
(Anniston and Ashland, Alabama, and College)	RM-9384
Park, Covington, Milledgeville,)	
and Social Circle, Georgia))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: April 24, 2000**Released:** April 28, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the Notice of Proposed Rule Making in this proceeding, 13 FCC Rcd 12738 (1998). WNNX License Investment Company ("WNNX License"), Jefferson-Pilot Communications Company ("Jefferson-Pilot") and Cox Radio, Inc. ("Cox Radio"), filed Comments. Preston W. Small filed Comments and Counterproposal. WNNX License, Preston Small, Cox Radio, and Brantley Broadcast Associates filed Reply Comments. For the reasons discussed below, we are modifying the license of Station WHMA, Channel 263C, Anniston, Alabama, to specify operation on Channel 263C3 at College Park, Georgia. We are also allotting Channel 264A to Ashland, Alabama, and Channel 261C3 to Anniston, Alabama.

Background

2. The Notice in this proceeding set forth two mutually exclusive Petitions for Rule Making. First, Preston Small, licensee of Station WLRR, Channel 264A, Milledgeville, Georgia, proposed the substitution of Channel 264C3 for Channel 264A, reallocation of Channel 264C3 to Covington, Georgia, as a second local service, and modification of his Station WLRR license to specify operation on Channel 264C3 at Covington. Second, WNNX License, licensee of Station WHMA, Channel 263C, Anniston, Alabama, proposed the substitution of Channel 263C3 for Channel 263C, reallocation of Channel 263C3 to College Park, Georgia, and modification of its Station WHMA license to specify operation on Channel 263C3 at College Park. In addition, WNNX License proposed the allotment of Channel 261C3 to Anniston, and Channel 264A to Ashland, Alabama, as new local services. In regard to its Petition for Rule Making, WNNX License also notes that its proposed reallocation of Channel 263C3 to College Park would eliminate an existing grandfathered 57.1-kilometer short-spacing between Station WHMA and Station WUSY, Channel 264C, Cleveland, Tennessee, and a 1.8-kilometer short-spacing between Station WHMA and Station WVNA-FM, Channel 262C1,

Tuscumbia, Alabama. In response to the Notice, Preston Small filed a Counterproposal proposing the reallocation of Channel 264C3 to Social Circle, Georgia, instead of Covington as originally proposed in the Notice.

3. Cox Radio, Jefferson-Pilot and Preston Small filed Comments in opposition to the proposed WNNX License channel reallocation from Anniston to College Park. All of these parties contend that College Park is not entitled to a preference as a first local service because it is located within the Atlanta Urbanized Area. In view of this fact and the fact that the proposed reallocation will result in a loss of service to approximately 600,000 persons currently being served by Station WHMA, these parties conclude that the public interest would be better served by retaining Channel 263C in Anniston.

4. In making a decision in this proceeding, it is first necessary to find that the proposed allocations at College Park, Ashland, and Anniston would result in a preferential arrangement of allocations as required by the Commission in Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989), recon, 5 FCC Rcd 7094 (1990). Upon a favorable determination, we must then compare this proposal against the competing Counterproposal for a new allocation at Social Circle, Georgia. We will discuss our resolution of both of these issues.

Discussion

5. After careful consideration of this matter, we are substituting Channel 263C3 for Channel 263C, reallocating Channel 263C3 to College Park, Georgia, and are modifying the license of Station WHMA to specify operation on Channel 263C3 at College Park. As requested, we are allocating Channel 261C3 to Anniston and Channel 264A to Ashland, Alabama, as a first local service. This will result in a preferential arrangement of allocations as required by Community of License, supra. In reaching this determination, we compared the existing versus the proposed arrangement of allocations using the FM priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1988).¹ In this instance, reallocating Channel 263C3 to College Park and allocating Channel 264A to Ashland would be preferred under Priority (3) as first local service to College Park. Anniston will continue to be served by four local stations. See Marion and Orrville, Alabama, 6 FCC Rcd 3482 (1991); Bolivar and Nixa, Missouri, 6 FCC Rcd 3648 (1991); Fruitland and Weiser, Idaho, 7 FCC Rcd 7538 (1992); Moro, Bosque Farms and Socorro, New Mexico, 8 FCC Rcd 791 (1993); Ravenswood and Elizabeth, West Virginia, 10 FCC Rcd 3181 (1995).

6. We also note that a Class C3 allocation at College Park would result in service to 2,133,614 persons in an area of 4,803 square kilometers. Inasmuch as College Park is located within the Atlanta Urbanized Area, this population and area already receive up to 28 aural services.² We recognize that

¹The FM allocation priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

² The Commission considers five reception services to be "abundant" service. See LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995); see also Family Broadcasting Group, 53 RR2d 662 (Rev. Bd. 1983).

even assuming activation of service by the Channel 261C3 replacement allotment at Anniston, 436,083 persons in an area of 11,280 square kilometers will lose the service from Station WHMA.³ In this area, 17,424 persons will now receive four fulltime aural services, 9,770 persons will now receive three fulltime services and 370 persons will now receive only two fulltime aural services. Even though we would not be creating any area receiving less than two aural services (referred to as "gray" area), we need to balance the public interest gains of the College Park proposal against the population that will receive less than five services which we consider to be abundant. At the outset, a new service at Ashland and, as discussed below, a first local service at College Park would be preferred under Priority 3 over the populations and areas that would receive less than abundant service which would be considered under Priority 4. In this regard, we note that Ashland itself currently receives fulltime service from only four stations. In addition to a net population gain of approximately 1,697,531 persons and the provision of two new locals services, we find the elimination of two existing short-spacings to be compelling factors weighing in favor of the proposed reallocation. Specifically, this will eliminate an existing 57.1-kilometer short-spacing to Station WUSY, Cleveland, Tennessee, and a 1.8-kilometer short-spacing to Station WVNA-FM, Tuscumbia, Alabama. The elimination of the 57.1-kilometer short-spacing with Station WUSY will also eliminate interference to Station WUSY reception to a population of 2,306 persons in an area of 115 square kilometers. Cf. Point Pleasant and Red Bank, New Jersey, 5 RR2d 1762 (1965).

7. In taking this action reallocating Channel 261C3 to College Park, we recognize that this will result in Station WHMA providing a 70 dBu signal to 45% of the Atlanta Urbanized Area. We are concerned with the potential migration of stations from lesser served rural areas to well-served urban areas. To this end, we will not blindly apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making such a determination regarding a proposal to award a first local service preference, we apply existing precedents. See e.g. Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc. (KFRC), 5 FCC Rcd 3222 (1990); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). In essence, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and, most importantly, the independence of the suburban community.⁴

8. In this situation, College Park, with a 1990 population of 20,457 persons, is entitled to a preference as a first local service. While this population total is only 5.2% of the population of Atlanta, we note that such a percentage has not precluded favorable consideration as a first local service. See

³ In the event that there were no replacement services, 656,303 persons in an area of 18,117 square kilometers would lose service. In this area, 29,615 persons in an area of 2,300 square kilometers would receive four aural services, 20,013 persons in an area of 1,553 square kilometers would receive three aural services, 5,775 persons in an area of 559 square kilometers would receive two aural services, and 11 persons in an area of 2.67 square kilometers would receive one aural service.

⁴ As stated earlier, College Park is located within the Atlanta Urbanized Area and Station WHMA will provide a 70 dBu signal to 45% of the Atlanta Urbanized Area. With respect to communities located outside the Urbanized Area, we require such a showing only in situations where the station will provide a 70 dBu signal to 50% or more of the Urbanized Area. Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

e.g. Ada, Newcastle and Watonga, Oklahoma, 11 FCC Rcd 16896 (1996); Bay St. Louis and Poplarville, Mississippi, 10 FCC Rcd 13144 (1995); Scotland Neck and Pinetops, North Carolina, 7 FCC Rcd 5113 (1992); and D'Iberville and Wiggins, Mississippi, 10 FCC Rcd 10796 (1995). Consistent with the factors set forth in Faye and Richard Tuck, *supra*, we conclude that College Park is not dependent upon the Urbanized Area for its existence.⁵ College Park is a member of the Georgia Municipal Association and has an elected mayor, four elected city council members, and a city manager. The College Park city government, with 297 fulltime employees, includes a police department, a fire department, a department of public works, and a recreation department. In addition to its own local taxing authority, College Park has its own city judge and a code enforcement officer who enforces the city's zoning, building, electric, plumbing and other municipal codes. College Park operates its own electrical and water distribution systems, a sanitary sewer collection system, as well as municipal parks and recreation facilities including a municipal golf course. College Park has its own zip code and a local post office. Along with 802 licensed business establishments and its own health facility, College Park has its own religious and civic organizations. While College Park does not have its own local newspaper, local news and advertising is provided by The South Fulton Neighbor which specifically excludes Atlanta.

9. In its Comments, Cox Radio referred to the Commission decision in RKO General (KFRC), *supra*, in which the Commission did not afford Richmond, California, a preference as a first local service. Cox Radio contends that a decision in this proceeding awarding College Park a preference as a first local service would be inconsistent with the Commission decision in RKO General (KFRC). We disagree. That proceeding involved a six-way comparative hearing for the facilities of AM Station KFRC, San Francisco, California. Two of the applicants specified Richmond, California, as their proposed community of license even though they had proposed facilities (unlimited time at a power of five kilowatts) and coverage identical to the facilities and coverage proposed by the other applicants who had proposed San Francisco as the community of license. In order to preclude an anomalous and artificial resolution of that proceeding, the Commission did not afford Richmond a dispositive comparative preference as a first local service.

10. Even though the communities of Richmond and College Park have similar characteristics regarding independence from an Urbanized Area, the situations are distinguishable. WNNX License is

⁵In Faye and Richard Tuck, the Commission set forth eight factors in assessing the independence of a specified community: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. We have considered a community as independent when a majority of these factors demonstrates that the community is distinct from the urbanized area. Parker and St. Joe, Florida, 11 FCC Rcd 1095 (1996); Jupiter and Hobe Sound, Florida, 12 FCC Rcd 3570 (1997).

proposing a Class C3 allotment to serve College Park which provides a 70 dBu signal to 45% of the Atlanta Urbanized Area. In contrast, the applicants for Richmond proposed five kilowatts, sufficient to serve the entire San Francisco Urbanized Area, instead of a lesser AM power which would still have been adequate to serve Richmond. The primary distinction, however, between this proceeding and the Commission decision in RKO General (KFRC) is the fact that we will not permit our allotment priorities and policies to be used in a manner which might appear to condone an artificial and unwarranted manipulation of these priorities and policies. The Commission expressed this concern in RKO General (KFRC), 5 FCC Rcd at 7096, and in Community of License, 5 FCC Rcd at 3223. Awarding a preference as a first local service to the Richmond applicants would have awarded an unfair and artificial advantage to these applicants at the expense of the competing applicants who had proposed identical facilities for a San Francisco station. Unlike that proceeding, WNNX License did not propose an allotment to College Park which had been previously licensed to the larger community in the Urbanized Area. Instead, WNNX License merely proposed reallocating its existing channel from Anniston to College Park. As required by Community of License, it was then incumbent upon us to determine whether this would result in a preferential arrangement of allotments. It is our view that reallocating Channel 261C3 to College Park as a first local service, allotting Channel 264A to Ashland as a new local service, allotting replacement Channel 261C3 to Anniston, coupled with a net gain in service to 1,697,531 persons does, in fact, result in a preferential arrangement of allotments.⁶

Milledgeville and Social Circle, Georgia

11. As stated earlier, Preston Small filed a Counterproposal proposing the reallocation of Channel 264C3 to Social Circle, instead of Covington as originally proposed in the Notice. This would result in a first local service to Social Circle with a population of 2,753 persons. This will result in a service gain to 184,400 persons in an area of 4,773 square kilometers. This entire gain area already receives at least five aural services. On the other hand, removing Channel 264A from Milledgeville will result in 57,331 persons in an area of 2,486 square kilometers losing service. In regard to this loss area and population, we note that this will result in 115 persons in an area of 36 square kilometers receiving four aural services and 886 persons in an area of 34.9 square kilometers receiving only three aural services. Nevertheless, the proposed reallocation will result in Social Circle having its first local service and a net gain in service to 127,069 persons in an area of 2,287 square kilometers

12. At this juncture, it is necessary to compare the Preston Small proposal of a first local service to Social Circle against the WNNX License proposal for a first local service at College Park and a new local service at Ashland. Consistent with prior decisions, a first local service to the larger community of College Park, with a population of 20,457 persons, is preferred over a first local service at Social Circle, with a population of 2,753 persons. See Llano and Marble Falls, Texas, 12 FCC Rcd 6809 (1997); Three Oaks and Bridgman, Michigan, 5 FCC Rcd 1004 (1990). We also note that the WNNX License proposal provides an additional first local service to Ashland with a population of

⁶The reference coordinates for Channel 263C3 at College Park, Georgia, are 33-45-32 and 84-30-10. The reference coordinates for Channel 264A at Ashland, Alabama, are 33-13-15 and 85-49-35. The reference coordinates for Channel 261C3 at Anniston, Alabama, are 33-40-51 and 85-48-56.

2,034 persons. There are also additional public interest reasons to prefer the WNNX License proposal over the Preston Small proposal. First of all, the reallocation of Channel 261C3 to College Park and the allotment of Channel 264A to Ashland will result in a net service gain to 1,697,531 persons while the reallocation of Channel 264C3 to Social Circle would result in net service gain to 127,069 persons. Second, as stated earlier, the reallocation of Channel 261C3 will eliminate an existing grandfathered 57.1-kilometer short-spacing between Station WHMA and Station WUSY, Cleveland, Tennessee, and a 1.8-kilometer short-spacing between Station WHMA and Station WVNA-FM, Tuscumbia, Alabama.

13. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective June 14, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below to read as follows:

<u>Community</u>	<u>Channel No.</u>
Anniston, Alabama	261C3
Ashland, Alabama	238A, 264A
College Park, Georgia	263C3

14. The window period for filing applications for Channel 261C3 at Anniston, Alabama, and Channel 264A at Ashland, Alabama, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

15. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of WNNX License Investment Company for Station WHMA, Anniston, Alabama, IS MODIFIED to specify operation on Channel 263C3 at College Park, Georgia, in lieu of Channel 263C at Anniston, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may not be conducted in accordance with Section 73.1620 of the Rules until the Channel 261C3 at Anniston, Alabama, and the Channel 264A allotment at Ashland, Alabama, commence program tests; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or avoid the necessity of filing an environmental assessment pursuant to

Section 1.1307 of the Commission's Rules.

16. Pursuant to Sections 1.1104(1)(k) and 1.1104(2)(k) of the Commission's Rules, any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change of community of license and/or upgrade. As a result of this proceeding, WNNX License Investment Company, licensee of Station WHMA, is required to submit a rulemaking fee in addition to the fee required for the application to effect the change in community of license.

17. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau (202) 418-2177

FEDERAL COMMUNICATIONS COMMISSION

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